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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,281	01/09/2004	Eduardo Salcido		6587

7590 01/19/2005

ROGER A. MARRS
SUITE 1220
15233 VENTURA BLVD
SHERMAN OAKS, CA 91403

EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/753,281

Applicant(s)

SALCIDO, EDUARDO

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill (2,845,927) in view of Dean et.al. (1,562,302).

Hill in a nose filter (inasmuch as the mask of Hill covers the nose it is a nose filter) discloses:

- a base assembly (A, B);
 - a filter material (D);
 - a releaseable attachment means (32, 34) carried on peripheral edge marginal regions of said base assembly for retaining said filter material (D) thereon;
- and

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- support members (C) pivotally carried on said base assembly for removably retaining said base assembly and said filter material on a facial area.

The difference between Hill and claim 1 is Hill does not specifically disclose the support members being ear support members.

Dean in respiratory mask teaches ear support members (13) providing a means so the mask may be put on and removed quickly and with little trouble (Col. 2, lines 99-106).

It would have been obvious to one of ordinary skill in the art to modify the support members of Hill to employ any well known ear support members, doing so would have provided a means to put on and remove the mask quickly and with little trouble including the ear support members taught by Dean.

With respect to claim 2, Hill does not disclose the plates being ridge and does not disclose grooves. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the plates formed of a rigid material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design consideration. *In re Leshin* 227 F.2d 197, 125 USPQ 416.

With respect to the grooves Hill discloses conformal apertures (Figs. 1-3) for mounting the support members to the plates. At the time the invention was made, it would have been an obvious matter of design consideration to a person of ordinary skill in the art to have grooves on the plates for pivotally mounting the support members because Applicant has not disclosed that having grooves on the plates solves any

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stated problem or is for any particular purpose. Moreover, it appears that the support members attach equally well with apertures as opposed to grooves on the plates.

Accordingly, the use of grooves on the plates is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Hill/Dean.

With respect to claim 3, Dean teaches ear semi-loops (Fig. 1) and a pivot bar (at 12), with respect to the limitation of grooves note rejection of claim 2 above, such limitation of grooves is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Hill/Dean.

With respect to claim 4, Hill discloses said plates including openings in alignment to allow passage of ambient air to said filter material (Figs. 1, 2).

With respect to claim 5, Hill discloses said filter material is pad (D) composed of a close-mesh open cell foam (Col. 2, lines 51-56).

With respect to claim 7, Hill disclose:

- a base assembly (A, B);
- a filter material (D) having a front wall and sidewalls (See illustration of Fig. 1 below);
- a cup-like form (Fig. 1) having an open cavity (open cavity where filter material D is located);
- releasable attachment means (32, 34) carried on peripheral edge marginal regions of said cup-like form for retaining said filter material (D) thereon in said cavity; and

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- support members (C) pivotally carried on said base assembly for removably retaining said base assembly and said filter material (D) on a facial area.

With respect to the support members being ear support, Dean teaches ear support members (note rejection of claim 1 above).

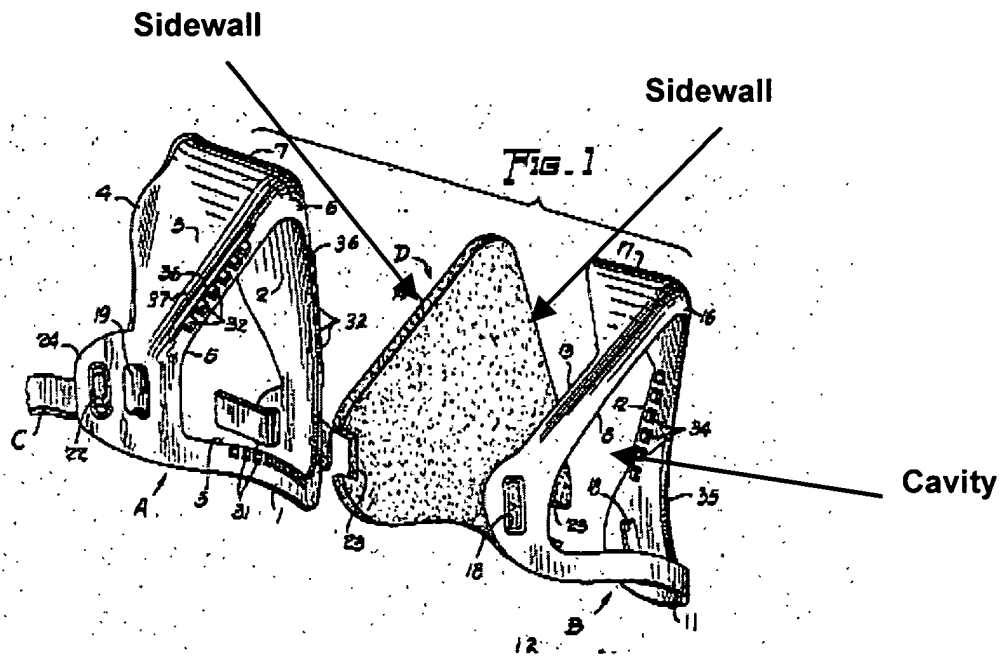
With respect to claim 8, note rejection of claim 2 above.

Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill/Dean as applied to claims 1-5, 7 and 8 above, and further in view of Williams (2,447,450).

The difference between Dean and claim 6 is the ear support members being joined by said pivot bar.

Williams teaches a pivot bar (4) joining two ear support members (7, 8) providing means to fit over the bridge of the nose. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ear support members of Dean with a pivot bar taught by Williams for joining the ear support members together as mere substitutions one pivot bar for another because the ear support bar of Williams would provide a means to seal the mask to the bridge of a nose of the wearer thereby providing a better seal.

With respect to claim 9, note rejection of claim 6 above.



Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show nose filter devices: 6,752,149; 5,603,317; 4,984,302; 4,981,134; 1,914,418; 2,295,321; 2,087,042; 390,027; 270,655.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Examiner
Art Unit 3743
January 10, 2005